

Nos. 25-364, and 25-365

In the Supreme Court of the United States

DONALD J. TRUMP, ET AL.,
Petitioners,

v.

STATE OF WASHINGTON, ET AL.,
Respondents.

DONALD J. TRUMP, ET AL.,
Petitioners,

v.

BARBARA, ET AL.,
Respondents.

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURTS OF APPEALS
FOR THE FIRST AND NINTH CIRCUITS

**BRIEF OF *AMICI CURIAE* COREY J. BIAZZO,
ESQ. AND KEVIN SONG
IN SUPPORT OF THE RESPONDENTS**

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INTEREST OF *AMICI*¹

Amici curiae are a practicing attorney and an independent constitutional scholar united in their commitment to the preservation of the U.S. Constitution's structural integrity and the original understanding and intention of the Fourteenth Amendment's Citizenship Clause.

Corey J. Biazzo, Esq. is a civil litigation attorney, author, and U.S. Navy veteran who has conducted extensive research and continuing legal education in constitutional law. He has represented clients in cases involving federal and state constitutional provisions, including *Hallandale Plaza, LLC v. New Tropical Car Wash, LLC*, 335 So. 3d 712 (Fla. 4th DCA 2022), where the court reversed a trial court decision on due-process grounds.

Kevin Song is an independent constitutional scholar whose work focuses on the original meaning and logical structure of the Fourteenth Amendment's Citizenship Clause as interpreted in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898).

This brief defends the Fourteenth Amendment's original, territorial rule of citizenship—*jus soli*—against reinterpretation by executive decree. It joins the institutional arguments of Mr. Biazzo, which emphasize the separation of

¹ No counsel for any party authored this brief in whole or in part, and no person or entity, other than Biazzo and Song, has contributed money that was intended to fund preparing or submitting the brief. Notifications were timely made as required by S. Ct. R. 37 to the counsels of record of the parties, and no objection was received.

powers, with Mr. Song’s doctrinal and historical analysis of the Amendment’s jurisdictional logic.

SUMMARY OF ARGUMENT

This case challenges Executive Order No. 14160, by which President Donald J. Trump purports to redefine constitutional citizenship. The order instructs federal agencies to deny citizenship to certain U.S.-born persons based on the immigration status of their parents.

That action conflicts with *Wong Kim Ark*, where this Court held that any person born in the United States and subject to its jurisdiction is a citizen, save for narrow exceptions: children of foreign diplomats, foreign public ships, hostile occupiers, and tribal members. 169 U.S. at 693.

The President lacks constitutional authority to narrow or reinterpret the Citizenship Clause. The power of judicial review rests exclusively with the Judiciary. *Marbury v. Madison*, 5 U.S. 137 (1803). To permit an executive redefinition of constitutional text would upend the separation of powers and substitute presidential will for constitutional amendment under Article V.

Substantively, the Fourteenth Amendment establishes a territorial and universal rule. Presence within the nation’s jurisdiction creates allegiance; allegiance entails protection; protection confirms belonging. That logic—articulated in *Wong Kim Ark* and reaffirmed in *Plyler v. Doe*, 457 U.S. 202 (1982)—admits no new exceptions.

Modern restrictionism divides into four principal families:

1. Complete Allegiance Theory, requiring full loyalty to the United States;
2. Consent or Permissive Jurisdiction Theory, conditioning jurisdiction on sovereign permission;
3. Factual Limitation Theory, confirming *Wong Kim Ark* to lawfully domiciled parents; and
4. Lawful Residence Theory, treating parental immigration status as jurisdictional.

Each theory conflicts with Justice Gray's reasoning in *Wong Kim Ark*, which constitutionalized a closed set of exceptions and rejected the notion that administrative permission defines constitutional jurisdiction.

To preserve both constitutional structure and individual liberty, this Court should reaffirm that the Fourteenth Amendment admits no new exceptions beyond those enumerated in *Wong Kim Ark*, and that the Executive Branch may not legislate or adjudicate constitutional meaning through directive or decree.

THE ARGUMENT

I. The Executive Branch Lacks Constitutional Authority To Reinterpret The Fourteenth Amendment By Executive Order

The Constitution divides federal power among three coordinate branches. Article II vests in the President the duty to “take Care that the Laws be faithfully executed.” That duty entails enforcement, not re-definition, of the law. The Executive cannot claim interpretive supremacy over the Judiciary or alter constitutional meaning through administrative command.

In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), this Court invalidated President Truman’s attempt to seize private property by executive order, holding that presidential authority “must stem either from an act of Congress or from the Constitution itself.” No constitutional text empowers the President to revise or narrow the Fourteenth Amendment, let alone any other section of the Constitution, on their own.

President Trump’s Executive Order 14160 purports to “clarify” who is entitled to birthright American citizenship, but in substance it attempts to reinterpret the Citizenship Clause contrary to this Court’s binding precedent. That act constitutes an unlawful Executive assumption of Article III Power of Judicial Review, violating the separation of powers upon which the rule of law depends.

II. The Judiciary Alone Exercises the Article III Power of Judicial Review

From *Marbury v. Madison*, 5 U.S. 137 (1803), forward, this Court has affirmed that “it is emphatically the province and duty of the judicial department to say what the law is.” No executive proclamation may alter that principle. This Court has repeatedly cautioned that “the judicial power ... cannot be shared with the Executive Branch.” *Kisor v. Wilkie*, 139 S.Ct. 2400 (2019). Deferring to executive reinterpretation of constitutional text would erode judicial independence and transform the President into the final arbiter of constitutional meaning.

To permit the President to manufacture litigation by issuing unconstitutional orders—then invite the Court to validate those orders—would invert the hierarchy of constitutional authority. Article V prescribes the exclusive process for amending the Constitution; litigation cannot be used as a substitute for democratic consensus.

III. The Fourteenth Amendment's Citizenship Clause Establishes A Territorial and Universal Rule of Citizenship

In *Wong Kim Ark*, this Court declared that the Fourteenth Amendment “affirms the ancient and fundamental rule of citizenship by birth within the territory ... with the exceptions only of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes. 169 U.S. at 693.

Justice Gray’s structure was exhaustive. “With the exceptions only” created a closed constitutional category. Presence within U.S. territory, not parental allegiance or permission, defines jurisdiction.

Justice Brennan’s opinion in *Plyler v. Doe*, 457 U.S. 202 (1982), confirmed that “even aliens whose presence in this country is unlawful have long been recognized as persons guaranteed due process,” and that “within its jurisdiction” is coextensive with the reach of law. *Id.* at 210-11. The population bound by law is the population protected by it.

“The Fourteenth Amendment, while it leaves the power, where it was before, in Congress, to regulate naturalization, has conferred no authority upon Congress to restrict the effect of birth, declared by the Constitution to constitute a sufficient and complete right to citizenship. ... The fact, therefore, that acts of congress or treaties have not permitted

Chinese persons born out of this country to become citizens by naturalization, cannot exclude Chinese persons born in this country from the operation of the broad and clear words of the constitution: ‘All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States.’” *Id.*

**A. The “Complete Allegiance” Theory
Misreads *Wong Kim Ark* and Revives a
Doctrine Gray Extinguished**

The oldest restrictionist argument, the “complete allegiance” theory, claims that to be “subject to the jurisdiction” of the United States, one must owe full political loyalty and no allegiance to a foreign power. This theory selectively revives *Elk v. Wilkins*, which held that a Native American born within U.S. territory but maintaining tribal allegiance was not a citizen. Restrictionists cite *Elk* to suggest that allegiance, not territorial presence, defines jurisdiction.

Justice Gray rejected this reading categorically. He explained that *Elk* “concerned only members of the Indian tribes within the United States” and had no tendency to deny citizenship to children born in the United States of foreign parents (*Wong Kim Ark*, 169 U.S. at 682–83). By confining *Elk* to tribal sovereignty, Gray extinguished any idea that “allegiance” could serve as a discretionary test of loyalty. The tribes were recognized as “distinct, independent political communities,” excluded not because of divided sentiment, but because they were domestic sovereigns.

Gray turned *Elk* from a rule into an exception. The tribal Indian owed allegiance to another sovereign within the United States; the alien owed allegiance to the United States itself by mere presence. To generalize *Elk* beyond that context would “confuse a unique accommodation of tribal sovereignty with a principle of immigration control,” a notion foreign to the Fourteenth Amendment’s purpose.

Gray redefined allegiance as a legal, not emotional, condition: “Every citizen or subject of another country, while domiciled here, is within the allegiance and protection, and consequently subject to the jurisdiction, of the United States” (at 693). Citing Webster’s report in *Thrasher’s Case*, he added that even a nonresident alien “owes obedience to the laws of that government, and may be punished for treason or other crimes as a native-born subject might be” (at 693–94). Allegiance arises automatically from the law’s authority—it is “temporary and local,” lasting as long as one remains within the sovereign’s reach (*The Exchange*, 7 Cranch at 144–45).

Thus, the complete allegiance theory collapses on itself. If the law cannot bind without prior allegiance, the State’s power to punish or tax aliens becomes incoherent. Gray resolved this by equating allegiance with jurisdiction. They are two terms for the same legal relationship: subjection to the sovereign’s authority. Hence, *Wong Kim Ark* did not ignore the allegiance theory; it reversed it. The foreigner’s “temporary obedience and protection ... is yet strong enough to make a natural subject,” as Lord Coke wrote in *Calvin’s Case*. If an alien may

commit treason, he is fully within allegiance. The “complete allegiance” doctrine thus dies by Gray’s own reasoning.

**B. The “Consent or Permissive Jurisdiction”
Theory doesn’t work Under Gray’s
Structure and Plyler’s Confirmation**

A modern variant, the “consent” or “permissive jurisdiction” theory, argues that constitutional jurisdiction depends on the sovereign’s consent to a person’s presence, so that undocumented immigrants are “outside” U.S. jurisdiction. This contradicts both Gray’s structure and Justice Brennan’s confirmation in *Plyler v. Doe*.

Gray explicitly closed the category of exceptions: “The Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory ... with the exceptions only of children of foreign sovereigns or their ministers, born on foreign public ships, or of enemies within and during hostile occupation, and ... members of Indian tribes” (at 693). The phrase “with the exceptions only” creates a closed constitutional set. None of these exceptions rests on the government’s consent; each arises from an absence of sovereignty—diplomatic immunity, extraterritorial ships, hostile occupation, or tribal autonomy.

By contrast, “unlawful presence” presupposes the government’s continuing sovereignty. The act of prosecuting, taxing, or deporting undocumented persons proves jurisdiction, not its absence. As Gray noted, “[a nation’s] full and absolute territorial jurisdiction” can be limited only by its own consent

(at 686). Nothing in law implies such a sweeping self-denial.

The consent theory therefore confuses administrative permission with constitutional authority. Permission regulates entry; it cannot define jurisdiction. Jurisdiction defines permission.

Plyler v. Doe confirms this logic. When Texas argued that undocumented children were not “persons within the jurisdiction” of the State, Justice Brennan replied that “Whatever his status under the immigration laws, an alien is surely a ‘person’ ... guaranteed due process” (457 U.S. at 210–11). He added that “Neither our cases nor the logic of the Fourteenth Amendment support” any narrower construction (at 211). Once “persons within its jurisdiction” under *Plyler* are coextensive with those “subject to the jurisdiction” under *Wong Kim Ark*, the conclusion is unavoidable: all persons physically present in the United States are within its jurisdiction.

The consent theory also misreads Gray’s phrase “so long as they are permitted by the United States to reside here” (at 694). Grammatically, “so long as” describes duration, not condition. It refers to the period during which Chinese residents were present in the United States, not to a legal prerequisite for jurisdiction. If Gray had meant to make lawful residence a condition, he would have contradicted his own “exceptions only” formulation. Jurisdiction is imposed by law’s dominion, not granted by administrative consent.

Even under the restrictionists’ own logic, the theory collapses. An undocumented immigrant in removal proceedings is permitted to remain during

adjudication and may receive work authorization. If “permission” defines jurisdiction, such individuals plainly satisfy it. The consent theory cannot exclude those whom the government itself governs.

**C. The “Factual Limitation” Theory
Contradicts the Architecture of *Wong
Kim Ark***

A subtler restrictionist view concedes Gray’s breadth but claims *Wong Kim Ark* was fact-bound, applying only to children of lawfully domiciled Chinese residents under exclusion laws. This “factual limitation” theory fails because Gray’s opinion was structural, not factual.

The decision unfolds as a five-part syllogism: (1) the common-law rule of *jus soli*; (2) its transposition into the Civil Rights Act of 1866; (3) its continuity in the Fourteenth Amendment; (4) the absolute nature of territorial jurisdiction under *The Exchange*; and (5) the closed set of exceptions. This framework defines principles, not facts.

Gray declared the Amendment’s rule “ancient and fundamental,” encompassing “all children here born of resident aliens,” with “exceptions only” of four categories (at 693). Nothing confines that sentence to Chinese laborers or lawful residents. He explained that “subject to the jurisdiction thereof” was “substantially identical” with the Civil Rights Act’s “not subject to any foreign power,” and that the substitution was “not intended to make the section less comprehensive ... or less applicable to persons of every race and nationality” (at 688–89).

The phrase “foreign power” referred to another sovereign’s territorial authority, not to personal allegiance or legal status. Birth within U.S. territory places one under its “exclusive and absolute jurisdiction,” regardless of parental status. To read *Wong Kim Ark* as fact-specific would violate Gray’s own interpretive canon: constitutional language must be read in light of the common law, whose *jus soli* rule was categorical. The child of an alien sojourner was a subject; birth under the sovereign’s peace was decisive.

Gray’s closed-set doctrine also bars factual limitation. By *expressio unius est exclusio alterius*, enumerating four exceptions excludes all others. Adding “children of unlawfully present aliens” would amend the Constitution by implication. The Amendment contains no qualifying adjective; Gray’s interpretation cannot depend on bureaucratic legality.

His citations to *The Exchange* and *Thrasher’s Case* reinforce this universality: “Independently of any domiciliation ... an alien, or a stranger born ... owes obedience to the laws of that government” (at 693–94). The phrase “independently of any domiciliation” alone refutes the claim that lawful or permanent residence is necessary for jurisdiction.

Plyler v. Doe again confirms this reading: the phrase “within its jurisdiction” extends to “anyone subject to the laws of a State ... into every corner of its territory” (457 U.S. at 215–16). Jurisdiction, therefore, cannot hinge on lawful status or domicile.

If the factual-limitation theory were correct, citizenship would vary by parental paperwork—an absurdity. The same child born one day before a

visa's expiration would be a citizen; born one day later, stateless. Constitutional meaning cannot depend on administrative happenstance. Gray's architecture was designed precisely to prevent such accidents from fracturing the unity of jurisdiction and allegiance.

D. The “Lawful Residence” or “Domicile Condition” Theory Inverts Logic and Misreads Context

The final restrictionist theory asserts that lawful residence is an implicit precondition for being “subject to the jurisdiction,” claiming that only the children of parents lawfully permitted to reside are citizens. This theory repeats the same interpretive error: turning descriptive context into prescriptive condition.

The “so long as” clause in *Wong Kim Ark* (at 694) describes duration, not status. It marks the time during which Chinese residents were present under U.S. protection. Reading it as conditional would contradict Gray's immediate reference to *Yick Wo v. Hopkins*, a case protecting aliens who lacked lawful residence. *Yick Wo* declared that the Fourteenth Amendment “is not confined to the protection of citizens” but applies to “all persons within the territorial jurisdiction, without regard to race, color, or nationality” (118 U.S. at 369). Gray quoted this to show that presence under law entails equal protection, and equal protection presupposes jurisdiction. A conditional reading would invert that logic.

Gray's reliance on *The Exchange* also forecloses the lawful-residence theory. He wrote that "subject to the jurisdiction thereof" must be understood in the same sense used by Chief Justice Marshall in *The Exchange* (at 687). Marshall referred to travelers and merchants who "spread themselves through another [nation]," owing "temporary and local allegiance." Jurisdiction arises from presence, not permission.

Moreover, Gray's four exceptions (at 693) exclude any "lawful residence" condition. None of the exceptions turns on legality of stay; all rest on the absence of sovereignty—foreign ministers, public ships, hostile occupation, or tribal independence. Adding "unlawful residence" would contradict Gray's own doctrine of "exclusive and absolute jurisdiction."

Plyler v. Doe reaffirms this point in modern terms: "Given such presence, [an alien] is subject to the full range of obligations imposed by the State's civil and criminal laws. And until he leaves the jurisdiction ... he is entitled to the equal protection of the laws" (457 U.S. at 215–16). Brennan's "until he leaves" is the modern counterpart of Gray's "so long as." Both describe temporal presence, not legal status.

Finally, the lawful-residence theory collapses logically. It assumes that the government may fine, detain, or deport individuals over whom it lacks jurisdiction—a contradiction. Enforcement itself proves jurisdiction. To make jurisdiction depend on lawful residence is to claim that law operates only with prior consent, a proposition both Gray and Marshall deemed "impossible."

Thus, the lawful-residence theory fails textually, structurally, and logically. It transforms jurisdiction—a condition imposed by sovereignty—into a discretionary favor. Such inversion would make constitutional protection and punishment equally optional, destroying the universality that lies at the heart of the Fourteenth Amendment.

These four theories seek to reopen a constitutional structure that *Wong Kim Ark* closed more than a century ago. Jurisdiction is imposed by law, not granted by permission.

IV. The Executive Order Conflicts with Established Precedent and Statute

Congress has codified the Fourteenth Amendment’s rule in 8 U.S.C. Sec. 1401(a), defining citizens as all persons “born in the United States, and subject to the jurisdiction thereof.” That statute mirrors *Wong Kim Ark* and has stood unaltered for generations.

Executive Order 14160, by excluding persons born under U.S. jurisdiction, contradicts both statute and precedent. The President may not nullify Article I legislative congressional enactments by executive fiat. *Clinton v. New York*, 524 U.S. 417 (1998). Nor may he reinterpret constitutional meaning contrary to this Court’s holdings. On at least four occasions members of this Court have articulated the vital principle that *no person, including the President, is above the law*. See *United States v. Burr*, 25 F. Cas. 30, 34 (C.C. Va. 1807) (No. 14,692d); *United States v. Nixon*, 418 U.S. 683, 713 (1974); *Clinton v. Jones*, 520 U.S. 681 (1997); *Trump v. Vance*, 140 S. Ct. 2412,

2431 (2020); *Trump v. United States*, 144 S.Ct. 2312 (2024). Thus the law and the separation of powers forbids such Presidential encroachment.

V. Preserving Constitutional Structure Safeguards Both Federalism and Civil Liberty

The separation of powers is not an abstraction but the practical guarantee of liberty. As Justice Scalia observed, “it is those humdrum provisions—the structural, mechanistic portions of the Constitution—that convert the Bill of Rights from a paper assurance to a living guarantee.” *Scalia Speaks*, 163 (2017).

When one branch arrogates the powers of another, the equilibrium of government is disturbed, and individual rights are endangered. If the President may redefine constitutional citizenship unilaterally, then future administrations may just as easily constrict or expand other fundamental rights by decree.

To deny citizenship to those born under full jurisdiction would create a class of persons whom the law governs but refuses to acknowledge. The Fourteenth Amendment abolished that possibility. As *Wong Kim Ark* and *Plyler* confirm, presence under law equals jurisdiction; jurisdiction equals allegiance; allegiance equals citizenship. This logical chain is the constitutional geometry that unites Justice Gray’s nineteenth-century reasoning with Justice Brennan’s modern reaffirmation. It preserves the universality of equal protection and the coherence of constitutional order.

The judiciary's responsibility is therefore twofold: to preserve its own independence and to uphold the fixed constitutional meaning of the Fourteenth Amendment. Reaffirming *Wong Kim Ark* and rejecting the Executive's illegal invitation to reopen it will protect both the structural integrity of the Constitution and the equality of all persons born under its jurisdiction.

CONCLUSION

This Court should deny certiorari to reaffirm that:

1. The power of Judicial Review is vested exclusively in the Federal Judiciary;
2. The U.S. Constitution may be altered only through Article V procedures; and
3. The Fourteenth Amendment's Citizenship Clause confers citizenship on all persons born within the United States and subject to its jurisdiction, without additional qualifications.

Only by adhering to these settled principles can the Court preserve the rule of law, the balance of powers, and the enduring promise of equal protection.

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